effecting repairs and maintenance to the plant which should have been done by the plaintiff. The defendants then set off their losses of actual profits and future earnings, repair and maintenance charges against the plaintiff's claim.

I do not consider that it is enough for the defendants to merely refer to the statement of defence without condescending to particulars to support their contention that they have merits in their defence. This is particularly so where the plaintiff has exhibited a letter dated 23 December 1985 written by the first defendant wherein it admitted it was far behind in its payments under the lease but all the same in consideration of their long business relationship it was prepared to pay the plaintiff $50,000 per month with effect from January 1986. By its letter dated 17 January 1986, the first defendant made one payment of $50,000 but defaulted after February 1986. In view of the clear admission of the amounts due under the lease as expressed by the first defendant, I could not place any reliance on the defendants' averments in their statement of defence, which had been pleaded and filed ten months after the letter of admission was issued. In view of this, I had ruled that since the defendants had failed to show any merits on the defence or counterclaim, I had accordingly dismissed their application with costs.

Application dismissed.

Solicitors: *Ponmugam & Co*; *Low & Tan*.

Reported by *Ng Sheau Jiuan*

Mohan a/l Paramsivam v Sepang Omnibus Company Sdn Bhd

HIGH COURT (KUALA LUMPUR) – ORIGINATING SUMMONS NO D2-31-42-88
SITI NORMA YAAKOB J
11 AUGUST 1988

Companies and Corporations – Share transfer of additional 15,000 shares – Application for registration of – Directors' refusal to register share transfer – Bumiputra equity in company reduced if share transfer acceded to – Refusal was made for sole purpose of endorsing government's bumiputra policy – Whether directors' discretion to refuse transfer was made mala fide – Companies Act 1965, s 162(2)

The applicant was a shareholder in the respondent company and requested to have another lot of 15,000 shares transferred into his name. At the board meeting of the respondent company, the board unanimously decided to reject it as a transfer would affect the bumiputra equity in the company. Aggrieved by this refusal, the applicant sought the court's discretion under s 162(2) of the Companies Act 1965 to rectify the register of members of the respondent by registering his name as the holder of another 15,000 shares.

Held, dismissing the application:

The directors' refusal to register the share transfer in the applicant's name was based on the composition of the shareholders and the percentage of their holdings as bumiputras and non-bumiputras. A transfer of another 15,000 shares from a bumiputra shareholder to a non-bumiputra would further reduce the bumiputra equity in the respondent company and such a refusal was made for the sole purpose of endorsing the government's policy to encourage active bumiputra participation in private businesses such as the ones carried on by the respondent company. It cannot therefore be said that the directors had exercised their decision mala fide.

Case referred to

1 *Kesar Singh* v *Sepang Omnibus Co Ltd* [1964] MLJ 122 (folld)

Legislation referred to

Companies Act 1965 s 162(2)
Rules of the High Court 1980 O 41 rr 3, 4

K Ravindran for the applicant.
Pretam Singh for the respondent.

Cur Adv Vult

Siti Norma Yaakob J: The applicant is a shareholder in the respondent company with 1,500 units of shares registered in his name. On 2 November 1987 he applied to have another lot of 15,000 shares, which he had purchased from a director of the respondent company, transferred into his name. At the board meeting of the respondent company, held on 20 December 1987, the applicant's request was discussed and the board unanimously decided to reject it as a transfer would affect the bumiputra equity in the company. Aggrieved by this refusal, the applicant now seeks the court's discretion under s 162(2) of the Companies Act 1965 to rectify the register of members of the respondent company by registering his name as the holder of another 15,000 shares in the respondent company.

In refusing to register the shares, the directors were acting under art 30(b) of the articles of association which reads as follows:

> 30 The right of members to transfer their shares shall be restricted as follows:
>
> (b) ...
>
> (c) The directors may in their absolute and uncontrolled discretion refuse to register any proposed transfer of shares.

This is not the first time that the court has been asked to determine the full extent of the operation of art 30(b), for in 1964, the same article was before Ismail Khan J, as he then was, in *Kesar Singh* v *Sepang Omnibus Co Ltd*[1] when similar proceedings were preferred by another aggrieved party against the same respondent. In that case the judge held that once the directors have stated on oath that they

have exercised their discretion in the interests of the company, it must be assumed that they have so exercised their discretion unless the contrary is established either from oral evidence or from the affidavits.

Refusal in the instant case was based on the composition of the shareholders and the percentage of their holdings as bumiputras and non-bumiputras. As at the date of the board meeting only 29,796 shares of the respondent's total issue of 100,000 shares were held by bumiputras with the balance held by non-bumiputras and the total number of bumiputra shares represented only 29.8% of bumiputra participation in the respondent company. Thus a transfer of another 15,000 shares from a bumiputra shareholder to a non-bumiputra would further reduce the bumiputra equity in the respondent company and it was for that very reason that the directors refused the applicant's request to register the shares into his name. Since such refusal was made for the sole purpose of endorsing the government's policy to encourage active bumiputra participation in private businesses such as the ones carried on by the respondent company, it cannot be said that the exercise of the discretion was for any ulterior motive but solely with the interests of the respondent company in mind. It cannot therefore be said that the directors had exercised their discretion mala fide.

Although there were other issues raised in the affidavits, the parties were, however, content to confine their arguments on the all-important issue as to whether the exercise of the discretion was made bona fide. There were also disputed facts raised, particularly as to the denial by Encik Amzah bin Mohamad Nor, the director of the respondent company, that he had sold the shares to the applicant or received any consideration for them. He maintains that when he executed the transfer form he was not aware of its contents and neither did he execute it before a solicitor. The solicitor concerned has since filed an affidavit to refute such allegation.

Then again the same director has affirmed that he does not write or speak English but his affidavit does not contain any jurat and under O 41 r 3, his affidavit could not be used as evidence. However, under r 4 of the same Order, such a defective affidavit may be used in evidence with the leave of the court. In exercising my discretion, I was, however, mindful of the fact that whatever is stated by Encik Amzah in his affidavit may not be the truth of the whole matter. In any event, the main consideration in this suit lies in the bona fides or otherwise of the directors when they unanimously decided to reject the applicant's request. Since I have already found that the refusal to register was made for the sole interests of the respondent company, and there is no evidence to the contrary, the directors had therefore exercised their discretion bona fide and to that end, I had dismissed this originating summons with costs.

Application dismissed.

Solicitors: *Morthi Ravi & Associates*; *Muthu & Partners.*

Reported by *Ng Sheau Jiuan*

Mohd Ali bin Mohd Radi v Director of Prison, Rehabilitation Centre, Pulau Jerejak, Pulau Pinang & Anor and other appeals

HIGH COURT (IPOH) – PERAK CRIMINAL APPLICATION NOS 54-4-88, 54-5-88 AND 54-6-88
ABDUL MALEK J
24 MARCH AND 16 APRIL 1988

Constitutional Law – Habeas corpus – Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 – Federal Constitution, art 5

In this case the applicants had originally been charged with trafficking in ganja. The prosecution subsequently applied for their discharge not amounting to an acquittal, but they were rearrested under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985. Subsequently a detention order was made against them and they were detained at Pulau Jerejak for two years. They applied for habeas corpus, contending that their arrest and detention by the police and the further arrest and detention under the order of the minister were both wrongful and unlawful on a number of grounds.

Held, dismissing the applications:

(1) The mere fact that the applicants had been discharged in a criminal case does not mean that no valid arrest could be effected under a preventive detention law or order for preventive detention or that no order for preventive detention could be passed against the applicants in connection with that very incident or that such order can be characterized as being made mala fide.

(2) The Dangerous Drugs (Special Preventive Measures) Act 1965 is also a preventive detention law as can be seen from the long title, preamble and body of the Act, and the court cannot be asked to inquire into the sufficiency of the reasons for the belief for the necessity of the detention as stated in the relevant affidavits which has resulted in the said detention orders.

(3) The courts may review an order for preventive detention if there is an allegation that a condition precedent for the making or the continuance of the said order has not been complied with or if there is an allegation that the grounds of detention stated in the said order do not fall within the scope and ambit of the particular legislation under which the said order was made or if there is an allegation of mala fides.

(4) In these cases the grounds stated by the applicants in their respective notices of motion are devoid of merit and the applications should be dismissed.